

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.T., Appellant**

**and**

**U.S. POSTAL SERVICE, BARRINGTON  
POST OFFICE, Los Angeles, CA, Employer**

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**Docket No. 06-1108  
Issued: August 9, 2006**

*Appearances:*  
*J.T., pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 12, 2006 appellant filed a timely appeal from an August 1, 2005 decision of the Office of Workers' Compensation Programs affirming the denial of her traumatic injury claim and a January 10, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merit and nonmerit decisions in this case.

**ISSUES**

The issues are: (1) whether appellant established that she sustained a right rotator cuff injury causally related to an accepted July 31, 2004 incident; and (2) whether the Office abused its discretion by denying her request for reconsideration.

**FACTUAL HISTORY**

On August 4, 2004 appellant, then a 53-year-old modified mail processor, filed a traumatic injury (Form CA-1) claiming that she injured her right shoulder and arm on July 31, 2004 while closing the heavy metal/chain link gate to the registry cage. She stopped work on July 31, 2004. At the time of the injury, appellant was on modified duty due to August 22, 2004

cervical and lumbar strains with a C3-4 discectomy under File No. 13-2060549.<sup>1</sup> The Office assigned the August 4, 2004 claim File No. 13-2111558.

In periodic reports from August 4 to September 24, 2004, Dr. Jon B. Greenfield, an attending Board-certified orthopedic surgeon, noted a history of injury. He held appellant off work through October 4, 2004 due to neck and right shoulder pain with right upper extremity paresthesias.

In an August 4, 2004 narrative report, Dr. Greenfield noted that, at the time of the July 31, 2004 incident, appellant was on light duty for an occupational neck injury with subsequent cervical fusion. He related that, while sliding a chain link door repeatedly open and close, she experienced the onset of right shoulder pain. Dr. Greenfield noted tenderness in the rotator cuff on the right, markedly restricted cervical motion with substantial effusions, lumbosacral tenderness and numbness in both legs. He diagnosed an exacerbation of cervical spine injuries, subdeltoid bursitis, a possible rotator cuff injury to the right shoulder and an acute lumbosacral strain.

In an October 1, 2004 letter, the Office advised appellant of the additional evidence needed to establish her claim, including a rationalized report from her attending physician supporting a causal relationship between the claimed conditions and the July 31, 2004 incident.

In an October 22, 2004 letter, the Office requested that Dr. John L. Howard, a Board-certified orthopedic surgeon scheduled to perform an impartial medical examination under File No. 13-2060549, review an amended statement of accepted facts and explain whether appellant sustained a new injury on July 31, 2004 as alleged. In an October 25, 2004 report, he reviewed records relating to the August 22, 2002 cervical injury but did not address the July 31, 2004 injury. In a November 23, 2004 letter, the Office again requested that Dr. Howard address the claimed July 31, 2004 injury.

In a December 3, 2004 report, Dr. Howard reviewed medical records and opined that appellant did not sustain “any clear-cut new injury on July 31, 2004” and that his October 27, 2004 examination revealed no signs of subdeltoid bursitis, rotator cuff injury, lumbosacral sprain or an exacerbation of cervical spine injuries. Therefore, appellant was not disabled for work on or after July 31, 2004 due to a right shoulder injury. He opined that appellant was able to perform part-time light-duty work.

By decision dated December 28, 2004, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office accepted that the July 31, 2004 incident occurred at the time, place and in the manner alleged. However, the Office found that the medical evidence did not support that appellant sustained any injury as a result of the July 31, 2004 incident. The Office noted that Dr. Greenfield did not provide sufficient medical rationale supporting the claimed causal relationship.

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<sup>1</sup> File No. 13-2060549 is not before the Board on the present appeal.

The record indicates that appellant returned to light-duty work for four hours a day on January 24, 2005 then stopped work on February 8, 2005.<sup>2</sup>

In a July 11, 2005 letter, appellant requested reconsideration. She asserted that Dr. Howard graduated medical school in 1950, “appeared befuddled and severely confused” during his examination and that his nurse constantly had to ask him to clarify his statements. Appellant contended that Dr. Greenfield’s reports were sufficient to establish that the July 31, 2004 incident caused a right rotator cuff tear.

In form reports from September 24, 2004 to June 15, 2005, Dr. Greenfield diagnosed neck, right shoulder and back pain due to repeatedly opening and closing a chain link door on July 31, 2004. He held appellant off work through July 8, 2005. In a May 26, 2005 report, Dr. Greenfield opined that a May 13, 2005 magnetic resonance imaging (MRI) scan clearly demonstrated a rotator cuff tear<sup>3</sup> which Dr. Howard failed to detect on his October 27, 2004 examination. Dr. Greenfield explained that, because of appellant’s cervical fusion, “she had to compensate for the loss of neck motion by using her right shoulder.” After the July 31, 2004 incident, appellant developed right shoulder pain new and distinct from her previous neck pain. Dr. Greenfield opined that it was “clear from the medical evidence provided that [appellant] sustained a rotator cuff tear” on July 31, 2004. He opined that appellant remained totally disabled for work. In a June 1, 2005 note, Dr. Greenfield requested authorization for right shoulder surgery.

Appellant also submitted statements from five coworkers asserting that the metal cage door she operated on July 31, 2004 was often stuck and in need of repair. She also submitted documents relating to her application for Social Security disability benefits.

By decision dated August 1, 2005, the Office denied modification of the December 28, 2004 decision. It found that Dr. Greenfield did not provide sufficient rationale supporting a causal relationship between the July 31, 2004 incident and the claimed rotator cuff tear.

In an October 4, 2005 letter, appellant requested reconsideration. She asserted that Dr. Greenfield correctly diagnosed a torn right rotator cuff and that the Social Security Administration had found her totally disabled. Appellant contended that the Office delayed approving an MRI scan then denied her claim as she did not have the test results to establish Dr. Greenfield’s diagnosis. She submitted September 27 and October 27, 2005 form reports from Dr. Greenfield diagnosing a right rotator cuff tear and a July 26, 2005 decision of the Social Security Administration regarding cervical disc injuries. Appellant also submitted copies of documents previously of record.

By decision dated January 10, 2006, the Office denied reconsideration on the grounds that the evidence submitted was either repetitious or irrelevant. The Office noted that her claim

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<sup>2</sup> By decision dated July 18, 2005, under File No. 13-2060549, the Office denied appellant’s claim for a recurrence of disability commencing February 8, 2005. File No. 13-2060549 and the July 18, 2005 decision are not before the Board on the present appeal.

<sup>3</sup> A May 13, 2005 MRI scan of appellant’s right shoulder showed a “[s]uspect complete tear of the supraspinatus tendon” and a “[p]robable old healed avulsion fracture of the greater tuberosity.

was cross referenced with her other claim and that there was no evidence in that file that should be included in the present claim file. The Office found that Dr. Greenfield's reports were irrelevant as they did not address the critical issue of causal relationship. The Office noted that appellant's arguments regarding the Office's delay or refusal to approve the MRI scan were irrelevant. The Office further found that the Social Security Administration's determination had no bearing on appellant's claim under the Federal Employees' Compensation Act.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Act<sup>4</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

Appellant claimed that on July 31, 2004 she injured her right shoulder when opening and closing a heavy chain link metal door. The Office accepted that this incident occurred as alleged, thus finding that appellant had met the first component of her burden of proof by establishing the alleged injurious incident as factual. The Office found, however, that appellant failed to submit sufficient medical evidence to establish that the incident caused a right shoulder injury.

In support of her claim, appellant submitted reports from Dr. Greenfield, an attending Board-certified orthopedic surgeon, who diagnosed subdeltoid bursitis, a possible rotator cuff injury to the right shoulder, an exacerbation of cervical spine injuries and an acute lumbosacral strain due to opening and closing a chain link door on July 31, 2004. The Office obtained an opinion from Dr. Howard, a Board-certified orthopedic surgeon scheduled to perform an

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

impartial medical examination regarding the cervical injury claim under File No. 13-2060549. Dr. Howard opined that appellant did not sustain a new injury on July 31, 2004 and that there was no evidence of a right shoulder injury during his October 27, 2004 examination. Dr. Greenfield responded that it was “clear from the medical evidence ... that [appellant] sustained a rotator cuff tear” on July 31, 2004. He asserted that Dr. Howard failed to detect the torn rotator cuff on his October 27, 2004 examination, abnormalities that were clearly visible on a subsequent May 13, 2005 MRI scan.

The Board finds that there is a conflict of medical opinion between Dr. Howard, for the government and Dr. Greenfield, for appellant, regarding the presence of a right rotator cuff injury and its relationship to the accepted July 31, 2004 incident. The Board notes that Dr. Howard functioned as an impartial medical specialist only regarding the cervical injury under File No. 13-2060549, not the claimed July 31, 2004 right shoulder injury under File No. 13-2111558. The Act, at 5 U.S.C. § 8123, states that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination. The case will be remanded to the Office for appointment of an impartial medical examiner to resolve the conflict of medical opinion. Following this and all other development deemed necessary, the Office shall issue an appropriate decision in the case. As the case will be remanded for further development regarding the causal relationship of the claimed right shoulder injury to the accepted July 31, 2004 incident, the second issue is moot.

### **CONCLUSION**

The Board finds that the case is not in posture due to a conflict of medical opinion. As the case is remanded for further development, the second issue is moot.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers’ Compensation Programs dated January 10, 2006 and August 1, 2005 are set aside and the case remanded for further development consistent with this decision and order.

Issued: August 9, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees’ Compensation Appeals Board